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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SHI WEI WU et al.,

Plaintiffs and Respondents,

v.

PUI LAN LAM

Defendant and Appellant.

B212227

(Los Angeles County
Super. Ct. No. BC328601)

APPEAL from an order of the Superior Court of Los Angeles County.
Conrad Aragon, Judge. Affirmed.

Butler & Dodge and Anne G. Koza for Defendant and Appellant.

Wasserman, Comden & Casselman, Frank W. Chen and Kirk S. Comer for
Plaintiffs and Respondents.

Pui Lan Lam appeals from the trial court's denial of her request for attorney's fees. We affirm.

BACKGROUND

On February 10, 2005, Shi Wei Wu and Irene Wu sued Lam, alleging claims of fraud, negligent misrepresentation, and unjust enrichment. The complaint alleged that the Wus had purchased an apartment building from Lam and that Lam had "failed to fully and adequately disclose" certain "unpermitted alterations" that had been made to the building. The complaint alleged that Lam "had full knowledge of the defects and code violations" because she had "either caused to be made the unpermitted [alterations] and/or because [she] possessed information regarding the unpermitted [alterations]."

The case was tried to a jury on theories of negligent misrepresentation and intentional misrepresentation. The jury found in favor of Lam on both claims. The record on appeal does not contain the judgment but does contain a notice of entry of judgment reflecting that judgment was entered on April 25, 2008.

Lam then moved for an award of attorney's fees pursuant to the relevant provision in the parties' contract. The Wus opposed the motion on the ground that they had requested mediation but Lam had refused, and the attorney's fees provision of the parties' contract barred an award of attorney's fees to a party who "refuses to mediate after a request has been made." (Bold emphasis omitted.) In her reply, Lam contended that she did not refuse to mediate.

On August 21, 2008, the trial court entered a minute order denying the motion for attorney's fees. The court concluded that Lam "refused a pre-litigation mediation demand, and, under the provisions of the residential land sale contract, is now barred from an award of attorney[']s fees."

On September 5, 2008, Lam moved for reconsideration. In support of the motion she argued that she had not in fact refused to mediate.

On October 22, 2008, the court entered a minute order granting the motion for reconsideration but reaffirming its prior order denying Lam's request for attorney's fees.

The court observed that “[t]he arguments and the evidence” presented in support of the motion for reconsideration were “the same arguments and evidence pressed on the court by Lam in [the] prior motion for attorney[’s] fees. [¶] The court has now considered these arguments twice. The result remains the same. Lam is not entitled to attorney[’]s fees.”

On November 14, 2008, Lam filed a notice of appeal.¹

DISCUSSION

Lam’s sole argument on appeal is that, under the parties’ contract, the mediation provisions of the contract do not apply to “any right of action to which Code of Civil Procedure § 337.1 or § 337.15 applies.”² (Underscoring omitted.) Lam contends that sections 337.1 and 337.15—which provide for statutes of limitations in construction defect cases—apply to the Wus’ right of action, that the mediation provisions of the parties’ contract therefore do not apply, and that her refusal to mediate consequently does not prohibit an award of attorney’s fees.

Lam never raised this argument in any form in the trial court. Neither her motion for attorney’s fees, her reply in support of it, her motion for reconsideration, nor her reply

¹ The notice of appeal states that the appeal is from “[a]n order after judgment under Code of Civil Procedure section 904.1(a)(2).” The notice does not otherwise identify the order, however, so it is not clear whether the appeal is from the October 22 order on the motion for reconsideration or the August 21 order on the motion for attorney’s fees. The Wus argue that the appeal should be dismissed because (1) Lam prevailed on her motion for reconsideration, and (2) an order on a motion for reconsideration is not appealable. The first argument fails because, although the trial court did grant Lam’s motion for reconsideration, the court reaffirmed its prior denial of her request for attorney’s fees, so Lam is a party aggrieved by the trial court’s ruling. (Code Civ. Proc., § 902; *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) The second argument fails because, regardless of the appealability of orders on motions for reconsideration, notices of appeal are liberally construed in favor of their sufficiency (Cal. Rules of Court, rule 8.100(a)(2); *Luz v. Lopes* (1960) 55 Cal.2d 54, 49), so we construe Lam’s notice of appeal as appealing from the August 21 order on the motion for attorney’s fees. The Wus do not argue that, so construed, the notice of appeal is untimely, and we see nothing in the record on appeal that would support such an argument. Accordingly, we decline to dismiss the appeal.

² All further statutory references are to the Code of Civil Procedure.

in support of it mentions or even cites either section 337.1 or section 337.15. Having failed to advance the argument in the trial court, she cannot do so now. (*Planned Protective Services, Inc. v. Gorton* (1988) 200 Cal.App.3d 1, 12-13 [a new argument for or against an award of attorney's fees may not be raised for the first time on appeal].) We therefore affirm.³

DISPOSITION

The order is affirmed. Respondents shall recover their costs of appeal.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JOHNSON, J.

³ The Wus have moved for an award of sanctions on the ground that Lam's appeal is frivolous. We conclude that the appeal is not so frivolous as to warrant such an award, so we deny the Wus' motion.